
Remarks

Claims 1-9, 11-16, 18 and 19 are presented for consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the preceding amendments and following remarks is respectfully requested.

Revised drawings are attached to this correspondence. The drawings include amendments removing descriptive text and to address the items noted for FIGS. 1A, 1D, 1E, 1F and 5A-7. Applicants thank the Examiner for the detailed comments regarding the drawings. Red ink identifies the proposed change. Several of the proposed changes involve removal of text or marks. These items are not identified by red ink.

With respect to the objection to the drawings under 37 CFR 1.83(a), Applicants respectfully note that in claims 1 and 17, only some of the objected features are present and these features are present in only the preamble of the claim. As for the backsheet, that feature is recited in claims 1 and 17 and is described in FIG. 1F. Claims 10 and 27 are amended to address the objections. Moreover, Applicants respectfully submit that FIGS. 1 D through 1 F depict elements ascertainable to one of ordinary skill in the art as garment adhesive and fastener components. Exemplary fastener components are also represented in detail in FIGS. 2A through 4. Accordingly, the objection to the drawings under 37 CFR 1.83(a) is obviated and should be withdrawn.

The reference to prior applications is amended as suggested by the Examiner

Amendments to other portions of the specification address the objections raised by the Examiner. With respect to the paragraph at page 10, line 11, the first fastener component is identified with the designations 70 and 70' in that paragraph and at FIG. 1F to distinguish between the two components. When the wings are folded as shown, the first fastener component 70' faces the backsheet layer of the article so it is in position to engage the underwear.

The structure of the subject matter depicted in FIGS. 5A and 5B is denoted in FIGS. 2A through 2E and is the material of claims 3, 12 and 21. The structure depicted in FIGS. 7 is a nonwoven loop material and, more particularly, the nonwoven described in the specification at page 15 and in U.S. Patent Application Serial No. 754,419 which is now U.S. Patent No. 5,858,515.

With respect to the objections to claims 1-27, claims 1, 10, 17 and 27 have been amended to insert the word -- layer -- after the word backsheet. Claim 10 has been amended to address other aspects of the objection.

Claims 1-28 stand rejected under 35 U.S.C. 112, second paragraph.

Claims 1, 10, 17 and 27 are amended to clarify specific details about the fastener and wing position with respect to each other and the article. Support for the subject matter of this amendment exists at, for example, pages 2, 9 and 10 of the specification and FIGS. 1D, 1E and 1F.

With respect to the alleged inconsistency between the preamble and claims, Applicants have amended claim 10 to further recite "a sanitary napkin". As for claims 1, 17, 27 and 28, it is the Applicants' position that no inconsistency exists because these claims are directed to a sanitary napkin including a fastening system.

Claims are further amended to recite that the first fastener component forms at least a portion of the first wing and at least a portion of the second wing. Claims are also amended to recite that the cooperating fastener component forms at least a portion of the first wing and at least a portion of the second wing. This language clarifies that a first fastener component and a cooperating fastener component is part of each wing. As a specific example directed to hook and loop fastening systems, each wing should have mechanical hook material as well as loop material.

The position of the components is definite in the claims as amended. The relative position of the first fastener component is generally adjacent the free end of each wing and the cooperating fastener component at least generally adjacent the free end of each wing. Support for this subject matter may be found at, for example, FIGS. 1A, 1B, 1D, 1E and 1F. Thus, no new matter is presented by these amendments to the claims.

Claims 1-28 stand rejected under 35 U.S.C. 102(e) as anticipated by US 2003/0004484A1 to Hammons et al. Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

Hammons et al. fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Hammons et al. discloses use of a mechanical fastening system on the wings of a sanitary napkin, it also teaches using an adhesive fastening system on the wings and fails to distinguish between adhesives and mechanical interengaging fastening systems. Importantly, such adhesive systems lack a first fastener component and a cooperating fastener component that become interengaged. Moreover, such adhesive systems are unable to present an unengaged first fastener component that can engage the fabric of an undergarment.

It is the Applicants' position that Hammons et al. does not necessarily possess the characteristics of the claimed invention at least because Hammons et al. discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention.

Applicants' representative has reviewed Hammons et al. disclosure of a mechanical fastening system and has been unable to locate any teaching or suggestion that such a mechanical fastening system is in any way adapted to engage the fabric of an undergarment. In view of the fact that Hammons et al. discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention and that lack of any teaching or suggestion that a mechanical fastening system is in any way adapted to engage the fabric of an undergarment, it is the Applicants' position that the products disclosed by Hammons et al. cannot possess the characteristics of the claimed invention.

It is also the Applicants' position that the claimed invention is patentably distinct and non-obvious over the teachings of Hammons et al. for at least the same reasons.

Claims 1, 6-10, 15-18 and 24-28 stand rejected under 35 U.S.C. 102(b) as anticipated by US 5,704,929 to Bien et al. and US 4,608,047 to Mattingly. Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

Bien et al. fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Bien et al. discloses use of a mechanical fastening system on the wings of a sanitary napkin by its reference to Mattingly, both Bien et al. and Mattingly also teach using an adhesive fastening system on the wings and fail to distinguish between adhesives and mechanical interengaging fastening systems. Importantly, such adhesive systems lack a first fastener component and a cooperating fastener component that become interengaged. Moreover, such adhesive systems are unable to present an unengaged first fastener component that can engage the fabric of an undergarment.

It is the Applicants' position that Bien et al. (and Mattingly) does not necessarily possess the characteristics of the claimed invention at least because Bien et al. (and Mattingly) discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention.

While it might be argued that Mattingly (and Bien et al.) discloses coating its wings with a cohesive material or using a mechanical fastening system (See Mattingly at col. 6, line 61 to col. 7, line 5), Applicants' representative has reviewed the Mattingly disclosure and has been unable to locate any teaching or suggestion that such a fastening system is in any way adapted to engage the fabric of an undergarment.

In view of the fact that Bien et al. discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention and that lack of any teaching or suggestion that a mechanical fastening is in any way configured to be temporarily interengaged on the topsheet side of the sanitary napkin, it is the Applicants' position that the products disclosed by Bien et al. cannot possess the characteristics of the claimed invention.

It is also the Applicants' position that the claimed invention is patentably distinct and non-obvious over the teachings of Bien et al. and Mattingly and any combination thereof for at least the same reasons.

Claims 4-5, 13-14 and 22-23 stand rejected under 35 U.S.C. 103 as anticipated by US 5,704,929 to Bien et al. in view of US 5,763,041 to Leak et al. Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

With respect to the combination of Bien et al. and Leak et al., the Applicants contend that such a combination is improper at least because Bien et al. teaches away from Leak et al. In particular, Bien et al. (by reference to Mattingly) teaches that a conventional hook and loop fastening system can be used on the flaps of a sanitary napkin instead of an adhesive. Such conventional hook and loop systems employ a discrete patch of loop material. See Mattingly at col. 7, line2-5 and FIG. 11.

In contrast, Leak et al. is directed to laminates suited for use as the loop components of hook and loop fasteners. According to Leak et al., a conventional separate, discrete patch of loop material is undesirable. See Leak et al at col. 9, lines 15-22. While it might be argued that Leak et al. teaches that its laminate can be used as a loop component anywhere hook and loop fasteners are employed, Leak et al. specifically teaches replacing a conventional, discrete patch of loop material such as taught by Mattingly with a laminate that forms the outer cover of a diaper to provide engagement at any location on the outer surface of the diaper.

At least for these reasons, it is the Applicants' position that there is nothing to suggest and, in fact, much to dissuade one of ordinary skill in the art from attempting to substitute a laminate suitable for a diaper outer that provides engagement at any location on the outer surface of the diaper for a discrete patch of loop material in a hook and loop fastening system located on wings or flaps extending from the sides of a sanitary napkin.

Assuming such a substitution were proper, the result would either be a sanitary napkin having a backsheet composed of the laminate of Leak et al. or a sanitary napkin as shown in Mattingly having discrete patches of loop material composed of the laminate of Leak et al. located on the flaps or wings.

The former configuration is not relevant to the Applicants' claimed invention. The latter configuration is undesirable according to Leak et al. and in no way makes obvious the Applicants' claimed invention.

Claims 2-3, 11-12 and 19-21 stand rejected under 35 U.S.C. 103 as anticipated by US 5,704,929 to Bien et al. in view of US5,723,884 to Osborn III et al. Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

With respect to the combination of Bien et al. and Osborn III et al., the Applicants contend that such a combination is improper at least because Bien et al. teaches away from Osborn III et al.

In particular, Bien et al. (by reference to Mattingly) teaches that a sanitary napkin or pantiliner has portions or sections that are removed to reduce the longitudinal and transverse dimensions (i.e., length and width) of the pantiliner. See Bien et al. at, for example col. 6, lines 7-57.

In marked contrast, Osborn III et al. teaches an absorbent article that is capable of extending or extensible in the length and width directions. See Osborn III et al. at, for example, col. 2, lines 38-41.

While it might be argued that Bien et al. (by reference to Mattingly) mentions hook and loop fasteners and that Osborn III et al. describes hook and loop fasteners, this does not overcome the inapposite teachings. It is the Applicants' position that a reference directed to reducing the length and width of an article by removing pieces cannot properly be combined with a reference directed to extending the length and width of an article by stretching or extension.

At least for these reasons, it is the Applicants' position that there is nothing to suggest and, in fact, much to dissuade one of ordinary skill in the art from attempting to substitute a pantiliner or sanitary napkin having removable portions and having wings or flaps with a stretchable or extensible absorbent article having wings or flaps.

Assuming such a substitution were proper, the result would a rather incongruous sanitary napkin having both removable portions and extensible. Such a configuration is not relevant to the Applicants' claimed invention and in no way makes obvious the Applicants' claimed invention.

Claims 1-28 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 and claims 1-48 of copending Application No. 10/37,277 (published Application No. 2003/0036740) and Application No. 10/037,287 (published Application No. 2003/0045856).

Applicants respectfully request this rejection be held in abeyance with respect to the present application until such time that allowable subject matter is identified.

According to the Examiner, commonly assigned '277('740) and '287('856) would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned application qualifies as prior art under 35 U.S.C. 102 (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. To resolve this issue, the Examiner requires the assignee under 37 CFR 1.78 and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter.

The below-signed attorney of record hereby makes a statement evidencing common ownership in accordance with MPEP §706.02(l)(2) regarding copending Application No. 10/37,277 (published Application No. 2003/0036740) and copending Application No. 10/037,287 (published Application No. 2003/0045856) and the present application:

STATEMENT OF COMMON OWNERSHIP

U. S Patent Application No. 10/37,277 (published Application No. 2003/0036740) and copending U. S. Patent Application No. 10/037,287 (published Application No. 2003/0045856) were, at the time the invention of U.S. Patent Application Serial No. 10/037,278 was made, owned by Kimberly-Clark Worldwide, Inc.

According to MPEP §706.02(l)(2), this statement alone is sufficient evidence to disqualify a patent or patent application from being used in a rejection under 35 U.S.C. 103(a) against the claims of currently pending application.

All outstanding issues raised by the Examiner having been addressed, it is respectfully submitted that the present application is in condition for allowance. Action to such effect is therefore respectfully requested.

The Examiner is invited to telephone the undersigned should any minor issues remain after consideration of the present amendment. The undersigned may be reached at (920)721-7277.

Please charge any prosecutorial fees that are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on January 15, 2004 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By:

Judith M. Anderson

Judith M. Anderson

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